

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

PATRICIA KAMMEYER, et al. : **CASE NO.: C-1-01-649**

Plaintiffs, : **Judge Spiegel
(Magistrate Black)**

vs. :

CITY OF SHARONVILLE, OHIO, et al. : **JOINT MOTION OF DEFENDANTS
TO VACATE ORDER OF NOVEMBER
11, 2004 (DOC. 192) AND REQUEST FOR
ORAL ARGUMENT ON MOTION FOR
SUMMARY JUDGMENT**

Defendants. :

Defendants, by and through counsel, hereby move this Court to vacate its Order of November 11, 2004 (Doc. 192) by which it granted Plaintiffs' Motion For An Extension Of Time (Doc. 191) to enable Plaintiffs to conduct the specific discovery identified in that motion before they are required to respond to Defendants' Joint Motion For Summary Judgment (Doc. 180). Because that discovery will not take place prior to May 10, 2005, the trial date in this case, there is no longer a reason to postpone ruling on the summary judgment motion. Further, because Defendants believe that a hearing of the summary judgment will be helpful, they request that it be set for oral argument.

Respectfully submitted,

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MEMORANDUM**I. RELEVANT PROCEDURAL POSTURE**

On October 22, 2004, Defendants filed their joint motion for summary judgment on the basis that Plaintiffs' claims are time barred (Doc. 180). Plaintiffs filed a memorandum in opposition to that motion (Doc. 185), and at the same time filed a motion to permit discovery before this Court ruled on the summary judgment motion (Doc. 186). In addition, Plaintiffs filed a motion for extension of time to reply to the summary judgment until after the requested discovery had been completed (Doc. 191). The specific discovery Plaintiffs identified are the depositions of certain former members of the Hamilton County, Ohio Prosecutor's Office. This Court granted Plaintiffs' motion for an extension of time (Doc. 191).

Subsequent to issuing its Order granting Plaintiffs' motion for extension of time, this Court denied the motion to quash that had been filed on behalf of the former members of the Prosecutor's Office (Doc. 195). That order has been appealed (Doc. 198), which means that, with briefing and oral arguments, the requested discovery will not be completed before May 10, 2005 even if the order denying the motion to quash is affirmed.

II. ARGUMENT

The sole basis for the Court granting Plaintiffs' motion for an extension of time and postponing its ruling on the summary judgment motion was to permit Plaintiffs to take the above-referenced depositions. It is now certain that that discovery will not be completed before the May 10, 2005 trial date, and, accordingly, there is no reason to postpone the ruling on the summary judgment motion. (As stated above, Plaintiffs have already filed their memorandum in opposition to the motion, and Defendants have filed their Reply Memorandum and Supplemental Reply Memorandum.) Under these circumstances, Defendants respectfully request that the Order of November 11, 2004 be vacated, this Court set the joint summary judgment motion for hearing, and,

thereafter, rule on the motion.

III. CONCLUSION

For the reasons stated above, the Order of November 11, 2004 should be vacated, and this Court should set Defendants' joint summary judgment motion for hearing and thereafter rule on the motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2005, a copy of the forgoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Brian E. Hurley

Brian E. Hurley

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